

**Commission on Child Support
Meeting Agenda
Friday, January 7, 2022
10:00 a.m. – 12:00 p.m. CST
Kneip Building – Conference Room #3
700 Governors Drive
Pierre, SD 57501**

Join Zoom Meeting

<https://state-sd.zoom.us/j/92212179687?pwd=a29HL25WaDZVUUhLNnRocDg1WE10QT09>

Meeting ID: 922 1217 9687

Passcode: 070975

- 10:00-10:10 Chairman Justice Myren – Call to Order
Roll Call (Marilyn Kinsman, DSS Senior Policy Analyst)
Introduction of Commission Members
Introduction of Zoom Participants / Onsite attendees
- 10:10-10:15 Executive Order 2021-16
- 10:15-10:20 Approval of Meeting Materials
✓ Approval of January 7, 2022 Agenda
✓ Approval of November 18, 2021 Meeting Minutes
- 10:20-10:30 Public Comment at 10:20 a.m. - *10 minutes for the public to address the Commission*
- 10:30-11:50 Dr. Jane Venohr, Center for Policy Research
✓ Considerations for Guidelines Changes
✓ Guidelines Discussion
- 11:50-12:00 Next Steps
- 12:00 Adjourn

**STATE OF SOUTH DAKOTA
OFFICE OF THE GOVERNOR
EXECUTIVE ORDER 2021-16**

Whereas, Past executive orders, by the virtue of their own terms may fail to expire on a date certain and remain in effect and in full force until modified, amended, rescinded, or superseded by the Governor; and,

Whereas, Past executive orders may no longer be relevant or applicable for the organization or operation of state government; and,

Whereas, Past executive orders have established task forces, committees, councils, commissions, or other groups or entities that are no longer active; and,

Whereas, It is in the best interest of the State and its citizens to review and modify, update, or eliminate unnecessary or outdated government regulations:

NOW, THEREFORE, I, KRISTI NOEM, Governor of the State of South Dakota, by the authority vested in me by the Constitution and the Laws of the State, do hereby Order and Direct the following:


1. That Executive Order 2012-01 be rescinded as no longer applicable to the Department of Corrections as the agency no longer runs a state juvenile correctional facility to which the Performance Based Standards apply.
2. That references to the Department of Agriculture now refer to Department of Agriculture and Natural Resources and that Wildland Fire be recognized as a division within the Department of Public Safety in Executive Order 2018-07.
3. That references to the Department of Agriculture now refer to Department of Agriculture and Natural Resources in Executive Order 2019-29.
4. That Executive Order 2020-29 remains in effect until March 31, 2022 and the Commission not dissolve or cease until March 31, 2022.
5. That the following executive orders be rescinded in their entirety as the emergencies which these Orders declared no longer exist and have resolved: 2013-05; 2013-08; 2013-13; 2014-05; 2014-08; 2015-08; 2016-10; 2018-06; 2019-04; 2019-05; 2019-07; 2019-13; 2019-19; 2019-23; 2019-28; and 2020-27.

Dated in Pierre, South Dakota this 30th day of December, 2021.




Kristi Noem
Governor of South Dakota

ATTEST:


Steve Barnett
Secretary of State

**Commission on Child Support
Meeting Minutes
Thursday, November 18, 2021
1:00 p.m.-5:00 p.m. CST
Kneip Building – Conference Room #3
700 Governors Drive
Pierre, SD 57501**

Join Zoom Meeting

<https://state-sd.zoom.us/j/95244464517?pwd=dnMrUjdUajdRZE15clVtandVOGZMz09>

Meeting ID: 952 4446 4517

Passcode: 836371

Commission Members Present: Chairman Justice Scott Myren and Virgena Wieseler, Department of Social Services (DSS) Chief of Children and Family Services. The following members participated via Zoom: Representative Mike Stevens; Senator Arthur Rusch; Lindsey Riter-Rapp, South Dakota State Bar; Terri Williams, Child Support Referee; Amber Kinney, Custodial Parent; and Rob Simmermon, Non-Custodial Parent.

Commission Members Absent: None

Others Present: Nichole Brooks, Kristen Campbell, and Jeremy Lippert, Department of Social Services (DSS) support staff; Suzanne Starr, Unified Judicial System (UJS); Marilyn Kinsman, DSS (via Zoom); Carmin Dean, DSS (via Zoom); and Dr. Jane Venohr, Center for Policy Research (via Zoom). Jessica Steidl, Linda Lea Viken, and Tom Pischke provided testimony via Zoom.

Call to Order: Chairman Justice Myren called the meeting to order at 1:01 PM CST. Roll was called and a quorum was determined. Commission members were welcomed and introductions of Commission members and onsite attendees were made.

Approval of November 18, 2021 Agenda: A motion was made by Lindsay Riter-Rapp to approve the November 18, 2021 agenda. Seconded by Representative Stevens. Motion carried.

Approval of October 27, 2021 Meeting Minutes: A motion was made by Virgena Wieseler to approve the October 27, 2021 meeting minutes. Seconded by Representative Stevens. Motion carried.

Approval of October 27, 2021 Public Hearing Minutes: A motion was made by Lindsay Riter-Rapp to approve the October 27, 2021 public hearing minutes. Seconded by Representative Stevens. Motion carried.

Public Comment at 1:20pm – 25 minutes for the public to address the Commission: Chairman Justice Myren invited the public to provide input regarding child support guidelines during the 25-minute period set aside for the public to address the Commission. Discussions should be limited to potential changes to the child support guidelines and statutes; it is not time to address individual child support cases, parenting time, or custody concerns. This is meant to be an opportunity for the public to provide comments regarding possible changes to the system that may be appropriate to address to the Legislature. The Department has worked hard to get public input. The public has had an opportunity to provide testimony during multiple Public

Hearings and public comment periods during meetings. The Commission met in Pierre on August 26, Sioux Falls on September 30, and Rapid City on October 27, 2021. The public was invited to provide input by writing and mailing comments to DCS at 700 Governors Drive in Pierre or providing written comments via e-mail to DCS@state.sd.us. The written comment period is closed. The public has also had an opportunity to provide testimony in person or remotely via Zoom. To get the word out, the Department of Social Services published paid advertisements, public service announcements on the radio, press releases and a banner were placed on the DSS website, information was published in the September and October State Bar Newsletters, notices were published on the Boards and Commissions portal on OpenSD.gov where information and actions of the Commission are posted. Chairman Justice Myren opened the meeting to receive public comments. No one was present in the room to provide testimony. Chairman Justice Myren called on Jessica Steidl to address the Commission during the public comment period.

Jessica Steidl provided testimony via Zoom. She was seeking clarification of SDCL 25-7-6.7, allowable deductions from monthly gross income (4), actual business expenses of an employee, incurred for the benefit of his employer, not reimbursed. Jessica asked what the intent of this law is. A concern is imputing income for a self-employed person and failure to provide income or other financial information on a modification. When it comes to other financial information, it should be further defined and indicate it is not only a 1040, but also other forms, e.g., Schedule C, expenditures as reported on a profit and loss statement. Judges should order which forms will be required for filing taxes when a person is self-employed. Jessica provided an example of claiming mileage, e.g., to deduct for vehicles, mileage must be logged for business vs personal use. She stated she did not receive any help from the child support referee and it cost her legal fees and subpoenas to obtain the necessary information. Jessica stated she should be able to take the allowable deductions that her ex erroneously claims on self-employment Schedule C and add it back in to his gross income. She stated there is a huge problem in South Dakota with self-employed and asked that other financial information be defined. Is other financial information expenditures as reported on a profit and loss statement, or is it another schedule?

Chairman Justice Myren asked that anyone wishing to provide public comments via Zoom to raise their hand. Chairman Justice Myren then called on Linda Lea Viken to address the Commission.

Linda Lea Viken provided testimony via Zoom. Linda introduced herself as an attorney from Rapid City. She sent written comments to the Commission. Linda stated she had the privilege of serving on the Commission for over 20 years and has an interest in what is happening. After listening and reading through the materials, her overall concern is that it is easy to get drawn in by people's individual concerns and needs, which the Commission needs to look at. She asked the Commission to always remember the effect on children with changes they are making. Some of the changes sound pretty drastic to her and would reduce the child support considerably, and then we lose the function in child support. This is about child support. Be sure to leave enough support for the children. Linda responded to some of Tom Keller's issues that he raised previously. Some of his ideas were good ideas, but some ideas she is concerned about as they make the system more complicated and again reduces child support down.

Chairman Justice Myren asked if any Commission members had any questions for Ms. Viken. Hearing none, he asked that anyone from the public wishing to provide public comments to raise their hand. Chairman Justice Myren called on Tom Pischke to address the Commission.

Tom Pischke provided testimony via Zoom. Tom stated he just noticed the meeting materials now and hadn't noticed them before. He sees there is a placeholder, section 6, for the abatement stuff.

He stated he wanted to reiterate that this is the number one priority for himself. He would like to see substantive changes made to SDCL 25-7-6.14.

Chairman Justice Myren asked if any other members of the public wished to address the Commission. Hearing and seeing none, he called on Marilyn Kinsman to inquire if it was necessary to continue the public comment period for the time allotted since no further people wished to address the Commission. Marilyn responded that if no one is wanting to make public comments it is OK to go on with the meeting and if someone comes in within the timeframe allotted that wishes to address the Commission, to take the comments at that time.

Chairman Justice Myren then called on member Rob Simmermon to address his question (in chat) to Ms. Viken. Rob asked Linda Lea Viken what specifically she was referring to that had been discussed that would lower child support. Linda responded that all the changes have an effect on child support. If you change the abatement, it will lower child support. Every time something is changed, for example, changing the tax law, it would knock down the income of both parents which results in lower child support. The money goes to the child, and that's Linda's concern. She asked if the members received her comments. Chairman Justice Myren stated staff accumulated all the written and public comments and they are included in a packet which members received and will be addressed specifically later in the meeting. Linda's comments are included in the meeting packet. Linda asked that everyone take time to read her comments.

Chairman Justice Myren asked if there were any additional comments from the public.

Jessica Steidl returned to provide additional testimony via Zoom. Child support arrearages and driver license issues have been discussed at past meetings. Jessica personally found a few things out herself this week and wanted to share her personal situation with the Commission. She commended the Department of Social Services (DSS) stating DSS is very easy to work with regarding driver license issues. She and ex were doing shared parenting. A Judge ordered a change giving her primary custody effective November 1, 2021 with 70/30 parenting time. Under the shared parenting cross credit she had been paying her ex \$753 a month for shared parenting; however, they failed to include in the court order that her child support case be closed. She has not paid November child support, and will not be paying December child support. Now she is in arrearages because it cannot be closed without a motion to close the child support case. As Tom Keller stated previously, if she were to pay November and December child support payments, there would be no recourse for her to get that money back. DSS has no ability to get the money from her ex. She received a letter from DSS that if arrearages reach \$1,000, her driver license will be taken away. Jessica called the local DSS office and was advised they will not file to take away her driver license; however, it would appear on her credit report if she did not pay it. Jessica stated she has a high credit rating so she called DSS in the Pierre office and spoke with a lady in charge of credit bureau reporting who documented the situation and assured Jessica that she would not be reported to the credit bureau. Jessica stated she did not agree with how quickly it all occurred; however, when she made calls timely, both DSS local and state offices were very willing to work with her. It is a long lengthy court process to get anything changed that could cost her about \$800 a month that she'll never see again. Jessica stated the Commission should address how to get overpaid arrearages back.

Chairman Justice Myren asked if any other members of the public wished to address the Commission. Hearing none, he stated since the meeting was running a little ahead of schedule the comment period started early. The amount of time allotted was met; however, he asked Kristen Campbell to post a reminder for people that may come into the meeting, that we will take public comments until 1:45.

Written Public Comments / Public Hearing Comments: Chairman Justice Myren referred members to the email from staff dated November 8, 2021 which included an attachment of the summaries of all the public verbal and written comments received. This is the opportunity for members to discuss comments received. Chairman Justice Myren asked for discussion from Commission members regarding the public input received, and asked if there were any questions raised that have not already been addressed, or comments that members wished to address.

Representative Stevens referred to Linda Lea Viken's written comments as found in Attachment 10, starting on page 79. He asked Linda to provide high points regarding what she believes to be most important.

Linda Lea Viken stated she wasn't around when Tom made his remarks. Tom had sent the Commission written suggestions and she looked at those and the other materials and has a difference of opinion. The arrearages issue needs to be addressed and taken care of. Someone needs to pay child support during that time. The cross credit was put in, and it has been difficult. The concern with referees making the decision is that you have to be specific as to how expenses are going to be shared in accordance with income. Linda noted concern about the burden that would be put on referees to do that and questioned if it would result in more court hearings. Linda stated she has real concerns about changes to the abatement statute. Other states have contiguous days in order to be allowed an abatement. If some of the suggested changes are made, there may be no child support paid at all. Imputed income is terrible but when you combine it with the second job issue, it is really bothersome. It has been taken advantage of. It was originally put in for folks to get a job to earn extra money. Now a person gets a low income job, then a second job at higher paying income and that money is not considered at all. Linda urged the Commission not to include student loans stating she has litigated a lot of cases in divorces with regard to student loans. The Supreme Court has ruled the Circuit Court can take those things into consideration. Typically at a child support hearing, attorneys are not involved so the parties do not have representation to know how to present things and the hearings could become very long. She asked that when the Commission is looking at these things, to take a child support order and figure it in, and see what happens when you do; you will find it will lower the child support considerably. Linda noted it is tempting to do that because the people who come talk to the Commission are people who are concerned about things that are happening in their lives and in their child support. She stated she is not being disrespectful to them, but the Commission's charge is support for the child. Originally, the system was set up so in situations where parents separate, the child loses the benefit of the income of both parties that they had when they lived together. The purpose of the child support was to soften the impact on the child. When the household was together, there was a percentage of income from each parent to use for expenses; this is why both incomes and percentages are used. Try to some extent to ensure the child does not have a detrimental effect due to decisions their parents made. Make sure the result is that the children suffer as little as possible as a result of changes being considered.

Rob Simmermon asked that the Commission also consider that when thinking about child support as nothing more than the amount paid demonstrates the real problem with the whole system today because there is more to it than the amount of money that is paid. He does not agree that a lower amount would be more detrimental to the kid; there is not a direct correlation. In every single case he has heard of the public speaking, the public is asking for abatement to be able to spend more money on the kids. Just because the dollar amount of child support is lower does not mean it will be detrimental to the kid. It could actually have a positive impact because money that the custodial parent is receiving but not spending on the kid, will be spent on the kid because the noncustodial parent would have additional money to spend on them. Rob asked Ms. Viken if that angle has been thought about. Linda Lea Viken responded that yes, it has been thought about. She stated

she wished it were always true that that's what would happen in those cases. The abatement is for the noncustodial parent. If we could promise the abated amount would be used for the child that would be a different story. People over the years have said that's what they would do, but they don't. It also means the person who is getting the child support is already using the money for paying for household expenses, mortgage, rent, food, and shelter. She stated she realizes the other parent pays some of the same expenses which is why the schedule was changed before. It is a serious matter.

Terri Williams joined the meeting via Zoom and introduced herself at 1:45 PM CST.

The public comment period formally concluded at 1:46 PM CST. Chairman Justice Myren thanked the public for their comments and asked Commission members if there were any questions or further discussion on the comments received. Hearing none, he moved forward to the next topic on the agenda.

Guideline Discussion / Cap: Chairman Justice Myren referred members to the income data document and child support calculation worksheet found in their meeting packets and asked Carmin Dean to address the materials.

- **Income Data:** Carmin shared that the first document was informational to answer a question from a prior meeting regarding how South Dakota wages are appraised. The document lists the annual pay standard, i.e., average wage, and includes the site where information is taken from. It's usually published in the month of June, so June 2022 the 2021 data will be published. Annual pay reflects the total compensation paid to covered workers in form of wages, salaries, bonuses, commission and overtime pay during the year. Annual pay is calculated by dividing total payroll by the average number of workers. It lists the annual pay standards for 2016 through 2020. The annual pay standard has increased by 41% over the past five years. The next part of the document is in reference to minimum wage information. The Department of Labor link where the information was taken from was provided. As stated during prior Commission meetings, South Dakota has a statute that minimum wage is increased by the CPI every year and there is no set end date to that. In 2022, this will increase January 1 to \$9.95 per hour which equates to \$1,509 per month. Since 2018, there has been an 11% increase in minimum wage.

Dr. Jane Venohr referred Commission members to the Side by Side Comparisons document. There has been a lot of inflation since South Dakota last reviewed the child support guidelines and there is better economic data on how much it costs to raise children. These issues caused some significant increases so the Commission is exploring whether or not to cap that to avoid sticker shock. Dr. Venohr provided an overview of the Side by Side Comparisons document. The light blue shading or emboldened area shows the difference that results in moving to an updated self-support reserve of \$1,073, which lowers child support when applied. The \$1,073 amount is the 2021 federal poverty guideline for one person. The way the self-support reserve works is that if the obligor income alone falls within the shaded area, only the obligated parent's income is considered and there is an assumption that the obligee's income is zero. If an obligor has an income of \$1,000 net per month, and even though the obligee has an income of \$1,000 per month also, the child support guideline schedule would show the obligor's income falling into the emboldened area, so would only use the \$50 in this example. Rob Simmermon asked if the part not shaded has an impact from the self-support reserve. Dr. Venohr responded that it is not shaded because at those higher incomes, the obligated parent's income after paying the guideline-calculated amount is more than the self-support reserve. In other words, the obligated parent's income has enough income to pay the full guideline amount and live above poverty. The pink shaded area on the document shows the

caps. Looking at income for \$5,700 and two children in the second cluster, the existing amount owed by both parents right now is \$1,483, i.e., \$741 for each parent if the parents have equal incomes. If the schedule were to be updated with no cap, the amount owed by both parents would change to \$1,544. The order would be $\$1,544 \times 0.5 = \772 assuming equal income, so a \$31 increase. If a 13% cap is imposed, it does nothing: the schedule amount (which is the amount owed by both parents) would still be \$1,544; same is true for 10%, and 8% caps. There is a change in the 4% cap. Four percent of \$1,483, i.e., existing amount, multiplied by 4%, would be \$59. This means a 4% cap on the amount that the schedule could increase could not be more than \$1,542 (which is \$1,483, the existing amount, plus \$59). This is why the last column for the two-child cluster shows \$1,542. This column shows what the basic obligation would be with a 4% cap.

To calculate the capped basic obligation at other percentages, take whatever percentage it is, multiply it by the existing amount, then add that amount to the existing amount. That's the maximum amount that can occur for the basic obligation.

Dr. Venohr addressed questions about why the proposed increases are not uniform across all incomes and number of children. She explained that the economic data shows that families with different incomes have different expenditure bundles and over time, people do not have the same expenditure bundles. Some spend more on gas and some spend more on food and some more on clothing. People are becoming more cognizant and aware of inflation and noting some prices have increased more than others, e.g., gasoline and used cars have increased; food which is more of an intense expense for lower incomes has had inflation, but not as much as used cars and gasoline. That is why there will not be a uniform increase throughout all income levels of the schedule. Venohr noted that South Dakota is now experiencing inflation over 13% since the existing schedule was developed. Dr. Venohr has not calculated the latest inflation numbers yet, but based on last month, economists are projecting to have a 6% increase in prices in this year alone. Given that the existing schedule was developed four years ago, South Dakota should consider more than inflation in the last year. As is, the proposed schedule was developed using July 2021 price levels and prices have increased significantly in the last few months. When looking at the Side by Side Comparison, income of \$9,001 - \$9,050, the existing amount in the first cluster for one child is \$1,326. Regardless if there would be 13%, 10%, 8%, or 6% cap, the proposed schedule amount is \$1,392. If a 4% cap is imposed, the proposed schedule amount is \$1,379. In the second cluster for two children, the existing amount is \$1,883. The proposed amount is \$2,036, which is less than what the existing amount would be if it were increased by 10, or 13 percent. If an 8% cap is imposed, the proposed schedule amount changes to \$2,034. If a 6% cap were imposed, the proposed schedule amount changes to \$1,996; and if a 4% cap were imposed, it would change the proposed schedule amount to \$1,958. These amounts are all shown in the Side by Side Comparisons chart. The point of the document is to provide options in the event the Legislature decides to impose a cap like they did last time. Dr. Venohr stated it would be best not to impose a cap in the economic sense, i.e., want things updated to the most current price levels is the accurate preference, and from a policy standpoint, Dr. Venohr acknowledged understanding the importance of a cap to address price sticker shock.

Chairman Justice Myren asked if there were any questions of Commission members. Hearing none, he voiced understanding to Dr. Venohr that from an economist's point of view, the dollar amounts shown in the 2021 column is the amount from using economic data on what it costs to raise a child. If a cap is imposed, the economic burden of the reduction falls onto the custodial parent, e.g., at a combined income of \$8,501, the amount would be reduced from \$2,271 using economic data on the cost of raising children to \$2,100 if a 4% cap is imposed,

all of that difference (\$171) falls onto the custodial parent. So the economic effect of that cap is all a burden on the custodial parent. Dr. Venohr acknowledged that is correct. Chairman Justice Myren stated understanding that it is a reduction of burden on the noncustodial parent, but it would be essentially ignoring the economic reality that these are the costs associated with raising a child for parents with that combined income level. Dr. Venohr agreed. Chairman Justice Myren addressed Dr. Venohr, asking that in an ideal world, her advice would be no cap whatsoever to which Dr. Venohr stated, "Correct." He then shared understanding that as a political reality, the higher the cap, the better, to which Dr. Venohr agreed if the political reality is more concerned about how much the obligated parent has to pay. She also shared that the problem will not go away because prices continue to go up. Setting a cap on the increases will just widen the gap between what families actually spend on children and the schedule amounts. Chairman Justice Myren stated the Commission is looking at larger numbers now due to the Legislature imposing a 4% cap during the last review; it will only build from there if a cap of any kind is imposed again. Dr. Venohr agreed. Chairman Justice Myren asked if there were other questions from Commission members.

Terri Williams commented that she takes exception to the sticker shock. There is a statute that exists that if the obligating parent's child support increases by more than 25%, a statute authorizes that child support to be phased in over a period of time. Dr. Venohr acknowledged that Ms. Williams' clarification is appropriate.

Rob Simmermon stated sticker shock will affect people with higher incomes. He does not think children are suffering at those levels of income. He stated it's a money distribution thing, because someone makes more money, they should give more money away. He also does not think legislation will pass without a cap.

Representative Stevens asked for clarification that the annual pay standard in 2020 in South Dakota was \$4,097 per month. Dr. Venohr stated that essentially that is correct. It takes the total payroll across the state and is divided by the average number of workers across the state. It averages the wage; but it is not on an individual level: that is, taking the wage of each individual in South Dakota, summing it, and then dividing it by the number of workers. In other words, there are two different ways to compute "averages." They do not produce the same average. Representative Stevens asked if there is data showing what percentage of South Dakota's population fit into the monthly wage scenarios, or how many are making \$10,000 per month. Dr. Venohr stated South Dakota male workers with a graduate degree have a median salary of \$70,000 per year and South Dakota female workers with graduate degree have a median salary of \$51,000 per year. These higher incomes [\$10,000+ per month] are not typical of South Dakota. Census data shows that in other lower income states, less than 10% of all families within that state are typically at that income level. These are generally income levels where parties are attorney represented and there are more likely to be deviations at higher incomes.

Rob Simmermon stated the likelihood doesn't matter because he is affected. He finally got to the point in his career in the last year where he has a nice income, a nice job, and he spends extra money on his kids. He stated the fact is, we don't know how many parents spend extra money on their kids, and we can't assume only just a few parents do. He questioned if it would be arbitrarily increased, or if people would need to file for a change in modification. Virgena Wieseler responded that people would need to request a modification. Dr. Venohr clarified that these are not arbitrary numbers. These are how much is spent on children of that family size and number of children. Rob stated it is drastically different from family to family and there are lots of other expenses increased like medical that he also pays, it works out to be equal.

Dr. Venohr asked if the guidelines model should be different for higher incomes than lower incomes. She explained that the South Dakota child support guidelines uses the income shares model and it's federally required to have a presumptive guideline that is to be applied in all cases. South Dakota relates it to economic data, like most states do, on how families actually spend on their children. She asked why the higher income group should be treated differently than the middle income group. Rob stated he agrees with that, but along with the same lines stated that if it costs X amount to raise a child, then why doesn't everybody just pay X amount of dollars? Dr. Venohr stated that the schedule reflects how much is spent on children on average with a standard deviation of about 3%. Rob believes it already treats people in different incomes differently; people with higher incomes [like him] pay more to raise a child even though it costs the same amount of money for him to raise his child than it does to raise someone else's child. Dr. Venohr stated there is a difference between cost and expenditures. If a parent has more income, the concept is the parent shares in the lifestyle. Dr. Venohr suggested that Mr. Simmermon was conflating the concept of the minimum cost of raising a child and economic data on what families actually spend on their children. The minimum cost would be the same across all incomes. Economic data on what families spend varies by income. It increases with higher incomes. It should not be the same between two parents unless the circumstances of those cases are identical, e.g., exact same incomes and number of children.

Terri Williams stated the more income people earn as a family, the more they pay for their lifestyle. Rob Simmermon stated he does not think an increase in his pay affects his kids' lifestyles unless he can spend the money directly on them, because his ex' expenditures have not changed. Representative Stevens disagreed. Rob implied his ex' expenses have not changed. Terri Williams stated she spends more on her child than she receives in support and to say costs do not need to increase is wrong in concept. Dr. Venohr questioned how the cost of child-rearing for the ex could not have increased when prices have increased for everyone else due to inflation, e.g. increased gasoline prices.

Chairman Justice Myren provided comments that if still living together, the kids would have access to all the money being earned; when separated, the kids should have access to the same lifestyle. Rob Simmermon stated at higher income levels there should be a cap. There should not be a reward for the custodial parent if he [the noncustodial parent] earns more and has a successful career.

Representative Stevens stated the child support guidelines is a starting point. The noncustodial parent has deviations and abatements to reduce the obligations. When the cost of living goes up, there is no way for the custodial parent to make up the difference in the cost of living unless they file for a petition to modify. A dollar five to 10 years ago is worth less than what it is today.

Chairman Justice Myren redirected the conversation stating the Commission had previously formed consensus to proceed forward with the child support guidelines that are premised on expenditures based on family income as opposed to only based on the bare necessities of raising a child. Rob Simmermon stated he is in favor of a cap. Chairman Justice Myren asked if there was other discussion from Commission members.

Terri Williams stated she is not in favor of a cap but would agree to utilizing a cap if it ensures getting the guidelines through legislation, but generally is not in favor of it. She shares the

comments that were made by Chairman Justice Myren with regards to a bigger gap being created with our economic status vs the child support guidelines.

Chairman Justice Myren reminded members that during the last Commission, recommendations were made by the Commission, but the Legislature was shocked by higher income changes and imposed a cap of four percent. The topic of caps was brought up to determine if we want to try to make an effort to avoid that and perhaps propose something with less of an impact. The Commission is under no obligation to impose a cap. The Commission's job is to come up with the most appropriate economic numbers as possible and our expert has told us that the chart without caps is the best way to accomplish that; however, there are political realities to deal with. He directed the topic to Representative Stevens and Senator Rusch for their guidance on the best way to carry this forward through the legislature. Representative Stevens stated it was a struggle last time and asked about data regarding what percentage of South Dakotans are in the higher income levels. Rob Simmermon stated the Commission should also consider how many people it affects; more people are working remote. Representative Stevens pointed out the data shows there was a 41% increase in income over the last six years and minimum wage has gone up 11%. It is not about the mom and dad; it's about the kids. The kids are entitled to two parents. Their lifestyle should not be different going from one house to the other. If the parents lived together, the kids would benefit and should also benefit if the parents are separated.

Dr. Venohr shared census data that shows there are 5,000 families in South Dakota that are married and have children and making over \$200,000 a year gross. If converted to net income, it would be close to \$12,000 per month after tax. Not all of these families would be filing for divorce. Among those that do and can negotiate around the best interest of the child, the child support guidelines provides a useful starting point to arriving at a stipulated amount. Rob acknowledged understanding and stated it would be ideal to put the extra money away in savings bonds for the kids when they turn age 18. Dr. Venohr commented that it is not extra money; it truly is what it expended on children at that income. The increase is to account for inflation and better and more current data on how families spend on children.

Representative Stevens deferred to Dr. Venohr regarding his calculation. If there was \$12,001 combined income, with no cap, the amount would be \$1,705 for one child, which used to be \$1,452. The difference would be \$253 per month. If each person paid half, it would be \$126.50 divided by 30 days in a month, equates to an increase of \$4.22 a day. Dr. Venohr concurred.

- **Child Support Calculations Worksheets:** Chairman Justice Myren asked Carmin Dean to provide an overview of the Child Support Obligation Calculations document. Carmin stated it basically compares what the current guidelines are using income scenarios and then what the obligation would be with no cap, or if there is a cap, using various percentages. The extract that Dr. Venohr had done on the caseload data analysis showed that the majority of families in the Division of Child Support caseload have one to two children, and 62% of those have one child; 27% have two children which is 89% of the caseload. Minimum wage was used for 56% of the obligated parents and 66% of the receiving parents. The extract had only one case of a combined income level of \$10,000 or more with one child. Carmin provided an overview of the examples provided in the meeting materials and how the calculations were determined. Carmin stated new withholding tax schedules will change in January. The table reflects combined incomes of parties and the split is based on each parent's income.

Guideline Discussion Finalized: Chairman Justice Myren asked Commission members for a proposal regarding the cap or a motion for the Commission to consider.

Representative Stevens motioned for no cap on the schedule. Chairman Justice Myren asked if there was any discussion on the motion. Rob Simmermon asked other members if they were also surprised by the number of South Dakota families [5,000] making over \$200,000. Terri Williams stated that did not affect her thoughts. She supports no cap even more after seeing the calculations provided in the examples presented by Carmin Dean. Generally, there are so many people at the lower income, and what that does to raise a child. Terri is in favor of no cap.

Chairman Justice Myren stated there is a motion before the Commission to recommend no cap and asked if there was a second. Terri Williams seconded the motion for no cap.

Rob Simmermon asked how this will be presented before the Legislature. Representative Stevens stated it would be presented by a bill form. There would be a Committee hearing and there would be opportunities for amendments. It would then need to pass through the Committee, then to the House floor, and follow the same process on the Senate side. The intent is to provide an educational presentation to legislators. Senator Rusch stated in theory he supports no cap because it more accurately reflects the increase in income levels, but perhaps some sort of cap may be more palatable for the Legislature.

Virgena Wieseler referred back to what Linda Lea Viken said and what Terri Williams said about the cost of raising a child. The support is for the child and from the Department's perspective, she does not support a cap. When it's broken down the calculations show very little decrease or increase and the proportionate share is divided up over 30 days, it is not a lot.

Chairman Justice Myren asked if there was further discussion before the Commission. Hearing none, he stated there is a motion to impose no cap on the guidelines schedule as a recommendation of the Commission and asked Marilyn Kinsman to call the roll. Justice Myren, Senator Rusch, Representative Stevens, Virgena Wieseler, Lindsay Riter-Rapp, Terri Williams, and Amber Kinney, responded aye. Rob Simmermon responded nay. Motion carried to impose no cap.

Chairman Justice Myren asked if there was any further general discussion relative to the child support guidelines. Virgena Wieseler asked Dr. Venohr what the next step is following the Commission's adoption of no cap. Dr. Venohr agreed to create a document to show what the child support guidelines would look like with no cap and will present it to the Commission. The Commission went into recess to allow Dr. Venohr an opportunity to create an updated child support guidelines document with no cap including columns for one to six children.

Chairman Justice Myren called the meeting back to order at 3:33 PM CST and told Commission members that Dr. Venohr created an updated child support guidelines schedule with no caps which has been shared with members and summarized his understanding that the updated chart incorporates all of the items the Commission had reached consensus on.

Dr. Venohr provided a summary of the updated schedule. The updated schedule is based on the most current economic data on child rearing costs, based on family expenditures that were tracked in 2013 – 2019. It is updated to July 2021 prices and is aligned for South Dakota's lower income. National data was used to measure child-rearing expenditures and then realigned to account for South Dakota's lower incomes. The shaded blue area, also referred to as the emboldened area per statute, reflects the self-support reserve of \$1,073 per month based on the federal poverty level in 2021 for one person. The first line on the schedule shows \$0 - \$1,100 combined net income. The first line is the minimum order of \$50. Using the provision of the statute

within the emboldened area, if the obligator's income alone falls within the emboldened area, then it is assumed that the obligee has no income.

To start discussion, Chairman Justice Myren shared his point of view that when comparing the existing schedule to the proposed schedule, for a one child household, with a combined net income below \$5,700, all of those categories have a net reduction in combined child support, until reaching the \$5,701 category. It's the same break point under the two children category at \$3,101 - \$3,150 as the first time child support goes up under the updated schedule; and under three children, it's at \$2,301 - \$2,350.

Dr. Venohr reminded Commission members that the existing schedule is based on BR3, the third estimates of the Betson-Rothbarth study, and from expenditures data collected in the 1990's. The consumer expenditure survey is conducted by the Bureau of Labor Statistics (BLS). It is a rigorous survey that is used to gauge inflation, and surveys about 5,000 families per quarter. The survey is constantly being improved. The BLS has improved the way income information is captured and some of the families that they thought were lower income, actually had more income, so it changed some of the movement in categories. When economists measure child-rearing expenses, it is measured as a percent of total expenditures. Over 90% of the expenses are co-mingled, e.g., food, transportation and housing. Families with income below \$45,000 per year spend more than their income. It would not be a fair policy to ask families to spend more than their income. This cap on expenditures is one of the reasons we see amounts slightly lower at lower incomes. These numbers are driven by the data. The BR5 estimates are better than BR3, BR4, and other studies that have been conducted by California and New Jersey corroborate that those amounts at the middle and lower incomes are appropriate amounts using the best data available.

Chairman Justice Myren opened the meeting for discussion regarding how the Commission wishes to proceed with the child support guidelines.

Rob Simmermon stated he now understands what Ms. Viken was saying about child support going down for some levels at lower incomes which is difficult to swallow. They are the most impacted and it affects children there the most. Middle to upper incomes have less of an impact than the lower incomes.

Chairman Justice Myren asked if any member would entertain a motion to suggest moving forward with the proposed guidelines or if further discussion is needed if members are not ready to make a motion.

Rob Simmermon stated his observation is that there is more of a negative impact to lower income families than there is a positive impact to higher income families for the kids' sake.

Amber Kinney stated the benefit of it [child support] going down for lower income families is the sense that they would be able to more easily pay it without going into arrears. For the middle and upper end, it's still within their wheelhouse based on the information provided.

Dr, Venohr stated that is a policy outcome which is consistent with what the federal Office of Child Support Enforcement is encouraging is to set reasonable orders at low income. It just happens to be where the most current economic data lands. Since the 1990's, there is an improved definition of income. The Bureau of Labor Statistics recognized that so many lower incomes on average spent more than they made. Beginning in 2006, instead of looking at expenditures, economists look at outlays which is an improvement in the consumer expenditure surveys. Expenditures

means it parallels how we measure gross domestic products including buildings, e.g., includes housing as an investment, but does not include mortgage principal payments, but includes mortgage interest or rent and tracks the lump sum of an expenditure which is why it switched from expenditure measures to outlays. Outlays measure what is spent out of pocket, e.g., mortgage interest; second mortgage; principles; interest. Higher income families are more likely to have mortgages than lower income families and are also more likely to buy things in installment payments. This change from using expenditures to outlays partially explains the increases at high incomes. It better reflects what families actually spend. South Dakota has essentially shortchanged higher income families by keeping the basis of its schedule the BR3 measurements which use expenditures and not outlays. It is not recognizing that outlays are more particularly at higher incomes.

Chairman Justice Myren stated the Commission needs to make a decision on whether to adopt the updated schedule which incorporates all the items the Commission had previously reached consensus on. If any member wishes to propose an alteration, now is the time to bring discussion forward. If there is no proposed alterations, the Chair would entertain a motion to adopt the updated schedule.

Lindsay Riter-Rapp moved to adopt the updated schedule. Senator Rusch seconded. Chairman Justice Myren stated the motion before the Commission which has been seconded, is to adopt the chart, *SD Schedule no cap November 2021 1073 SSR*, and asked if there was further discussion.

Rob Simmermon asked what percentage of those paying child support are in arrears now that fall within those numbers that are going down. Chairman Justice Myren stated no one is readily available to answer that.

Dr. Venohr stated this is an issue that has been addressed in the new federal rules that require states to have a low income adjustment to provide for the basic subsistence needs of an obligated parent. She did not have South Dakota specific data, but cited findings from national studies such as, 70% of arrears is owed by parents that have income of \$10,000 or less; most of the low-income obligated parents are in low-paying occupations and have barriers such as having been incarcerated, or substance use affecting employability. About 25% of South Dakota jobs fall into the very lowest income rung. There are a lot of jobs with lower income across the nation, not just in South Dakota. The federal rule changes is well-grounded in research and what the South Dakota Commission is proposing is consistent with what the federal Office of Child Support Enforcement is promoting at that income level.

Chairman Justice Myren referred members to the document titled, *SD Schedule no cap November 2021 1073 SSR.pdf* that Virgena Wieseler sent to members as drafted by Dr. Venohr today and entertained a motion to adopt the updated child support schedule. Marilyn Kinsman called the roll. Chairman Justice Myren, Senator Rusch, Representative Stevens, Virgena Wieseler, Lindsay Riter-Rapp, Amber Kinney, and Terri Williams responded aye. Rob Simmermon responded nay. Motion carried.

Abatements / SDCL 25-7-6.14: Suzanne Starr provided an overview of the findings of the Abatement Subcommittee. The Abatement Subcommittee addressed who can grant abatements. Some referees thought they could not grant an abatement based on wording of the current statute. The Subcommittee would like to update the statute to clarify the intent and allow a child support referee to make a recommendation for an abatement.

The Subcommittee also addressed whether to change the criteria for requiring 10 or more overnights a month before being eligible for abatement. A request from the public was that the abatement be granted for less than 10 nights, or even one night. South Dakota is one of only eight states that allow abatement. In South Dakota, the number of overnights do not need to be consecutive. Comparatively, Wyoming requires 15 consecutive nights in order to get an abatement. No state has moved to a zero obligation for each night that the noncustodial parent would have the child. There are new parenting guidelines being considered for adoption to increase parenting time to a minimum of 10 overnights per month. The Subcommittee thought the criteria for requiring 10 or more nights before being eligible for abatement was a good baseline for providing for the needs and best interests of children and recommended no change.

The Subcommittee also discussed if the range of the abatement percentage allowed should be expanded and determined that the current range of percentage is adequate and the fact finder can determine the appropriate percentage to use.

The Subcommittee also considered there needs to be a base amount of support. An issue was raised regarding consistency and ease of abatement. Some calculations presented to the Subcommittee were incorrect; the abatement is based upon the daily amount, not the monthly amount. The Subcommittee recommended including the abatement calculation to the statute to remedy this concern.

The Subcommittee also addressed situations where the child support obligation was greater using the cross credit than abatement. A member of the public had commented at the Sioux Falls Public Hearing that she would be better off financially to give up physical custody of her child and not using the cross credit. The calculations were analyzed and the Subcommittee determined the calculation used by the member of the public had been done incorrectly. The Subcommittee recommended language be added to the statute to clarify that use of abatement should never be less than using cross credit calculations.

Terri Williams stated the Subcommittee did not want the abatement to exceed the cross credit. The concern of referees not necessarily knowing if they can grant an abatement has been addressed; however, referees deal with a number of people who informally arrange a parenting time schedule, but do not have a stipulation approved by the court to actually be an order. Terri recommended changing the first sentence to read, "If the child resides with the obligor 10 or more nights in a month pursuant to a custody agreement, the court or child support referee may...", changing the word *order* to *agreement*.

Representative Stevens stated his recollection was that there was also a provision regarding verification of net as far as requests for abatement. Terri Williams agreed with Representative Stevens. She stated the Subcommittee recommended to also add a provision that if a noncustodial parent does not exercise the parenting time with an awarded abatement, the noncustodial parent could be mandated to repay the abatement back to the custodial parent. That is language within the final paragraph of the proposed abatement statute that is before the Commission.

Chairman Justice Myren referred members to the draft abatement legislation that was provided to members during the previous Commission meeting.

Rob Simmermon asked about the purpose of the court ordered custody language and provided an example of when there is an agreement for a parent to have kids over spring break, and both parties agreed to it, would it also have to be court ordered. He questioned if the purpose of adding

the language 'pursuant to a custody order' was so there would be no 'he said', 'she said'. [SDCL 25-7-6.14]. Terri Williams responded that currently the statute states if there is not an order, an abatement cannot be awarded. The proposal is for in situations where parties express agreement for abatement, to allow the fact finder to award abatement by removing the requirement that an agreement has to be approved by order because of the number of people that do not ever go through the court system to have an approved parenting plan. Many people just go through the child support process.

Chairman Justice Myren referred to materials from the last Commission meeting regarding abatements and stated understanding that the intent is to change *custody order* to *custody agreement* in the first line and in the proposal presented, and questioned if there would be a change from *fact finder* to *court or child support referee*. Terri Williams stated this was discussed at the last meeting but she was not sure if anyone tracked that. It's the same proposal with the proposal offered at the last meeting except to change the word *order* to *agreement* in the first line.

Chairman Justice Myren asked the host to add the proposed abatement legislation from the last meeting to the screen to ensure all members are looking at the same document. He then stated understanding of the Subcommittee's recommendation to change *custody order* to *custody agreement* in the first line and asked if there were any other changes for consideration.

Rob Simmermon restated his question regarding why court ordered custody language is necessary when it is agreed between the two parties to have the kids over spring break. Terri Williams stated that people cannot come up with their own agreement to modify a child support order on a month to month basis. There has to be an abatement at the time child support is established, which results in abatement being annualized over the year. It's not intended for the purpose of having kids for an extra couple of nights during a month, and getting an abatement to modify child support. That is not the intent.

Chairman Justice Myren asked if there were further questions or discussion regarding the abatement proposal.

Terri Williams stated she has received comments from individuals who were concerned that fact finder does not necessarily mean court or referee; it could be interpreted more broadly to include mediator or other matters. This was specifically geared toward referees or the court making the determination as to whether an abatement would be warranted or not.

Chairman Justice Myren asked for further discussion regarding changing *fact finder* to *court or child support referee* and asked for Commission member discussion. Suzanne Starr stated it would be appropriate to change *fact finder* to *court or child support referee*; it is cleaner, and as expressed in the past, *fact finder* is not defined in statute.

Chairman Justice Myren asked if there was any other input from the Subcommittee. All other Subcommittee members including Terri Williams, Representative Stevens, and Senator Rusch voiced agreement with the change from *fact finder* to *court or child support referee*.

Chairman Justice Myren noted there appeared to be consensus of Commission members to insert into the packet the two alterations discussed at today's meeting including that the word *order* be changed to *agreement*, and *fact finder* be changed to *court or child support referee*. He asked if there is any further discussion regarding abatements.

Virgena Wieseler voiced approval of recommended changes but asked how the last paragraph, last sentence, "If the noncustodial parent does not exercise the extended parenting time during a particular year, the noncustodial parent shall be required to repay the abated amount of child support to the custodial parent," would be handled. Suzanne Starr stated Subcommittee discussion was that the remedy would be through small claims court. Virgena asked if people would try to go through the Division of Child Support, which they can't do, or if the remedy of small claims court needs to be put into the statute, or if that's an educational piece.

Terri Williams said per her review of statutes, there is indication that the Department of Social Services is to provide a form to be utilized for reimbursement of uncovered medical expenses but to her knowledge, that has never been completed, so people have resorted to using small claims. Nichole Brooks stated for health insurance for the unreimbursed portions, the Division of Child Support has a form available online that can be utilized by either the custodial or noncustodial parent to initiate the process to notify the other parent what their obligation of unpaid medical expense is, and then they proceed to small claims court. The document was created and can be used, but it is not necessary to complete the document in order to proceed.

Chairman Justice Myren asked if there was other discussion surrounding abatement. Hearing none, he stated the group has come to consensus on abatement and moved to the next item on the agenda regarding federal regulation requirements and medical support requirements which the Commission previously met consensus on.

Chairman Justice Myren then referred to the draft statute document titled, *2022 Bill Draft: DSS-01, Most recent version as of: (11:30AM) (11/4/21)* which includes proposed legislation with the exception of the changes to abatement discussed today. He opened discussion regarding any recommended revisions or amendments to the proposed legislation prior to Commission members voting to proceed with changes to the statute(s).

Representative Stevens asked about the possibility of breaking all the information into two or three bills instead of one. Jeremy Lippert stated he would review the executive order.

Rob Simmermon asked what the reason for the use of *nonduplicative costs* in SDCL 25-7-6.14 is for. Terri Williams stated that initially when child support is calculated, it is based upon the schedule. As Dr. Venohr has testified, that schedule is based on costs that are incurred to raise children. The abatement is for the purpose of saying we are not going to impact what it normally takes to raise a child, instead looking at giving an abatement for extra expenses that the noncustodial parent may have as a basis to allow an abatement. Rob voiced understanding that the cost to maintain a home is the same on both sides doesn't change whether you have kids or not. Terri agreed.

Chairman Justice Myren asked if there was other discussion regarding the packet of proposed legislation. Since the Commission had already reached consensus on the items, the Commission could take the packet of proposals forward instead of individual statutes. He asked Jeremy Lippert what the executive order stated. Jeremy responded that he does not see anything in the executive order or the underlying legislation that it should be limited to one bill. Chairman Justice Myren stated even if the Commission considers the proposed legislation as one packet does not mean it must be presented to the Legislature as one packet as well.

Virgena Wieseler stated she changed *fact finder* to *court or child support referee* in the abatement packet. Chairman Justice Myren noted anywhere that *fact finder* is noted would be changed to *court or child support referee*.

Rob Simmermon asked what happens when a person does not provide financial information and does not want to cooperate. Terri Williams referred to SDCL 25-7-6.26 as found in the first sentence on page 23 of 25 of the meeting packet.

Chairman Justice Myren asked for a motion to approve the draft legislation either separately or as a group.

Terri Williams made a motion to approve the proposed modifications to the statutes as discussed today and incorporating the previous version of SDCL 25-7-6.14 with the modifications discussed today, including all items of the draft proposed legislation in the packet. Lindsey Riter-Rapp seconded the motion.

Chairman Justice Myren stated the motion before the Commission is to approve the draft legislation contained in the document titled, *2022 Bill Draft: DSS-01, Most recent version as of: (11:30AM) (11/4/21)* with inclusion of the version of SDCL 25-7-6.14 as amended by the Commission today which includes a revision of the word *order* to *agreement* and altering any addition of *fact finder* to *court or child support referee*.

Rob Simmermon asked about Section 8 requesting possible removal of *parent's residence* as a requirement. Jeremy Lippert stated the *parent's residence* language was added based on federal requirements to include that language. Chairman Justice Myren reiterated that the federal regulations include that particular item and they [the federal government] want it considered as a fact.

Rob Simmermon then asked about number seven, other relevant background factors and asked why it is so generic and questioned if it is based upon South Dakota occupational wages from the Labor Department's earning levels. Carmin indicated it needs to be generic as South Dakota establishes orders for individuals who do not reside in South Dakota. They may have wages in another state. Rob acknowledged understanding.

Chairman Justice Myren asked if there was further discussion on the motion pending before the Commission. Hearing none, asked Marilyn Kinsman to call the roll. Chairman Justice Myren, Senator Rusch, Representative Stevens, Virgena Wieseler, Lindsay Riter-Rapp, Terri Williams, Amber Kinney, and Rob Simmermon responded aye. Motion carried.

Next Steps: Virgena Wieseler stated that next steps include Dr. Venohr taking the draft legislation and compiling a draft report for review by Commission members. It is anticipated the draft report will be received around December 10, 2021. Once the report is received, it will be forwarded electronically to Commission members along with an established timeframe for review and comments. If necessary, a Zoom meeting will be scheduled to work through anything that cannot be resolved via email. It will be a tight timeframe to allow for review in order to print, release it to Cabinet Secretary Gill, then to Governor Noem, and finally to the Legislature.

On behalf of the Department of Social Services, Virgena Wieseler thanked the Commission for the good work that is being done. She thanked Chairman Justice Myren for chairing the Commission and the Commission members for taking time away from work while serving on the Commission. She also recognized the work of Dr. Venohr, Department of Social Services staff, and Unified Judicial Services staff. The public was also recognized for their involvement in providing feedback. Chairman Justice Myren mirrored what Virgena stated and asked for a motion to adjourn.

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Adjourn: Motion to adjourn by Lindsay Riter-Rapp. Seconded by Virgena Wieseler. Members voted unanimously to adjourn. Motion carried. Meeting adjourned at 4:58 PM CST.

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